85-1008

Supreme Court, U.S.
FILED
DEC 2 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

BRYANT R. BRITT,

Petitioner,

vs.

SIMI VALLEY UNIFIED SCHOOL DISTRICT, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT AND APPENDIX

BRYANT R. BRITT
252 West 65th Street
Los Angeles, Ca. 90003
(213) 751-4351
Attorney for Petitioner,
In Propri Persona

QUESTIONS PRESENTED FOR REVIEW

1. Is it constitutional for a district court to disregard the direct rulings and mandates of the Supreme Court of the United States in a case which was granted certiorari?

2. Is the ruling, "the motion for leave to proceed in forma pauperis is granted" based on the motion presented?

3. Is it considered cruel and unusual punishment to use a continual deposition request, and continual rescheduling for the purpose of keeping a respondent in firing range of an attack with radio frequency radiation such as the x-ray, atomic ash, and radar which are known to be health hazards?

4. Is it considered the denial of the due-process of law to debar, impede, or obstruct a petitioner from performing, and seek judgment against him because he failed to perform?

LIST OF PARTIES TO THE PROCEEDINGS

Simi Valley Unified School District, John W. Duncan, George Hawkins, Robert Marcus, Allen Jacobs, Kenneth Ashton, Frederick Riess, Viola Brooks, Lewis Roth, Stephen Hogg, Sandra Binns, Helem E. Carrico, and Davis McCamy.

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IN THE

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BRYANT R. BRITT,

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v.

SIMI VALLEY UNIFIED SCHOOL DISTRICT, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, Bryant R. Britt, prays that this Honorable Court issue its writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit entered October 4, 1985 which is in conflict with federal law and the Constitution of the United States.

OPINION BELOW

This case was dismissed by the district court on the conclusion of a Magistrate's Report which refused to accept the U.S. Supreme Court's ruling in this case. The Ninth Circuit affirmed, but it also refused to recognize the order issued by the U.S. Supreme Court in this case.

JURISDICTION

The jurisdiction of this court is invoked pursuant to the United States Constitution, Article III, Sections 1 and 2 with such regulations as the Congress shall make. Judgment was entered against the appellant by the Ninth Circuit Court of Appeals on October 4, 1985, and this petition is timely filed within 90 days thereof.

CONSTITUTIONAL PROVISIONS INVOLVED

Article III of the U.S. Constitution and Amendments I, and XIV. Failure of a lower court to recognize the decisions of the Supreme Court and denial of due process.

STATEMENT OF THE CASE

1. Appellant seeks injunctive relief and damages, alleging that the appellees conspired to violate his constitutional rights in violation of 42 U.S. Code, Sections 1981, 1983, 1985 (3), 1986, and Sections 2000 (d). He also alleged violation of California's Civil and Education Codes.

2. Plaintiff alleges that he is a black citizen who had ten years of seniority with the Simi Valley Unified School District before he was given a notice of termination predecitated upon an unusual method of discharge which was not according to the legal method of layoff procedure as specified by state law.

3. The appellees defaulted in their obligation to support the appellant, and they directed stressful action against him over a period of three years for the purpose of ousting the appellant from his employment because he was a black citizen.

4. The appellees violated the appellant's privacy, and had him excommunicated with the use of federal funds with mass participation.

5. The appellees served the appellant with a 90-day Notice to improve, and a notice to terminate his services within 30 days if he did not file for a hearing.

6. The appellant filed for a hearing and he received notice that a hearing would be held before a Commission of Professional Competence on July 3, 1975.

7. The appellant did not feel that the hearing could be fair; therefore, he resigned at the end of the school term.

8. After the appellant had resigned, the appellees would not grant him any recommendations, and they had the state to investigate his competency with the use of mass participation.

9. Around 1982 the U.S. Supreme Court granted certiorari in the case and issued an order for the petitioner to proceed in forma pauperis based on the petitioners motion which requested the appointment of council.

10. The courts refused to recognize the Supreme Court order.

ARGUMENT OF THE PETITIONER

I.

The appellees employed an alternative method to deprive the appellant from his position under colors of state law as follows:

> California Stats. 1959, Ch. 2, P. 949, Sect. 13447. "Where in any school year the average daily attendance in all of the schools of the district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two years, or whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, and when in the opinion of the governing board of said district it shall become necessary by reason of such condition to decrease the number of permanent employees in said district, the said governing board may terminate not more than a corresponding percentage of the certificated employees of said district, permanent as well as probationary, at the close of the school year; provided that the services of no permanent employee may be terminated under the provisions of this section while any probationary

employee or other employee with less seniority, is retained to render a service which said permanent employee is to and competent to render.

...and services of said employees shall be terminated in the inverse order in which they were employed, as determined by the board..."

II.

The accusations held against the appellant were not sufficient to terminate a permanent employee in the absence of immoral conduct, the conviction of a felony or crime involving moral terpitude. The only reason that the appellant was terminated is because he was one of two black teachers who taught in that school district.

III.

There were some probationary teachers in the district and many permanent teachers in the district with less seniority. Some of the teachers in the district with less seniority were encouraging students to give the appellant trouble. The appellant was the only black teacher at that school.

IV.

The Commission of Professional Competence was a quasi-district or completely controlled by the district by virtue of its composition. Once accepted, it became res judicata to present the case in the federal court.

V.

A judgment was issued in this case against the petitioner. The petitioner pleads excusable neglect because of the subterfusion used by the respondents against the petitioner; and teh petitioner request the Court to reverse the decision because it represents the abuse of disgretion by the Court of Appeals.

The respondents were using the deposition request as a weapon to keep the petitioner in firing range while they expose him to R.F. radiation which has been known to destroy connective tissue to the bones and kidney function. The deposition requests of the respondents was arranged and cancelled many

times by the respondents. At one point, the petitioner showed up, and he was informed that he would find his continuation date in the mail. The petitioner is a landlord, and they are now making it difficult for him to collect his rent as a technique to keep him around where they can expose him to R.F. radiation. The Action against the petitioner denies to him the right of association and equal protection of the law.

The decision in *Bolling v. Sharpe,* 74 S. Ct. 693, 347 U.S. 497, 98 L. Ed. 884, has held that the liberty guaranteed and protected by constitutional provisions denotes not only freedom from unauthorized physical restraint, but embrances also the freedom of an individual to use and enjoy his faculties in all lawful ways, acquire useful knowledge, marry, establish a home, and bring up children, worship God according to his dictates, and live and work where he chooses.

In *Johnson v. Dye,* C.A. Pa. 175 F.2d 250, 70 S. Ct. 146, 338 U.S. 864, 94 L. Ed. 530; *Home Tel. etc. v. Los Angeles, Cal.,* 33 S. Ct. 312, 227 U.S. 287, 57 L. Ed. 510, it was held that the government and every one of its branches, departments, agencies, and subdivisions are bound by the prohibitions of the due process guaranteed which extends to legislative, judicial, and administrative or executive proceedings.

If the trial court renders a judgment or decree different from, or not in substantial compliance with that directed by the appellate court, a second appellant proceeding may be prosecuted with reference to alleged error committed in the new proceeding provided the decision appealed from is a final decree.

Cohen v. Glove Indemnity Co., C.C. A Pa., 120 F 2d. 791

My motion which the Supreme Court acted on and granted me leave to proceed in forma pauperis definitely requested the appointment of counsel. It is generally accepted that leave to proceed in forma pauperis is based on the motion. At the time that the magistrate ordered the petitioner to make a written report to the court, the plaintive was not physically able. The respondents or agents of the respondents were following the petitioner over highways with high frequency devices to prevent the petitioner from performing. All libraries turn their security

system on when the petitioner enters. There is a limit to the amount of radar that a person can absorb. The petitioner pleads excusable neglect as provided under state law.

The Constitution guarantees that the court shall be open and that there shall be a remedy for injuries to persons and property.

Denver v. Campbell, 80 P. 152, 33 Colo. 162.

CONCLUSION

The respondents were engaged in a conspiracy with mass participation against the appellant with the aid of federal funds. They caused the petitioner to be monitored by a state wide systems technique with mass participation which is still in action until the present date. They were exposing the petitioner with radiation to deprive him the use of the law library to research his case; and he is being denied the use of his home and public accommodations for the purpose of typing his papers and sleeping. He has had to spend some nights in the Angeles National Forest and some in sewer lines to avoid the attack. Youth funds under the Juvenile Justice Delinquency Prevention Act are being illegally used against the petitioner who is a senior citizen.

Since the petitioner could not locate a lawyer to take his case, he requested the court to appoint one. The U.S. Supreme Court granted that request. A ruling of, "The motion to proceed in forma pauperis...is granted" is based on the motion which the petitioner presented to the court. The fee was already paid. It was error for the district court to proceed without first appointing the petitioner his attorney. No attempts were made to implement the order of the U.S. Supreme Court.

The petitioner did not take the deposition and respond to the magistrates order to file a written opposition to the proceedings because of *hindrance, prevention,* and *debarment* by the respondents or agents of the respondents. They were in pursuit of the petitioner with an electric charged focused on him to monitor him and to retrieve his heart beat and zapping him. The State of California recognizes excusable neglect of a litigant who is not represented by an attorney under state law.

For the foregoing reasons expressed herein, the petitioner respectfully requests the Supreme Court to issue a writ of certiorari to review and reverse the judgment of the U.S. Court of Appeals entered herein, and remand the case back to the proper court without oral argument. The Supreme Court is the law of the land, and it has the authority to direct lower courts in solving litigations. The petitioner, hereby, moves for a determination on the merits. 1

The deposition complained of by the respondents and which was ruled on by the judge was to be held in the office of the respondent's attorney [illegible] was cancelled and continued about fifteen times by the respondents as a method to delay trial, and confuse the petitioner. When he appeared, they later sent a notice of continuation.

Federal Courts, 820 West:

COURT OF APPEALS MUST UPHOLD SANCTIONS IMPOSED FOR A FAILURE TO OBEY AN ORDER TO COMPEL DISCOVERY UNLESS DISTRICT COURT ABUSED ITS DISGRESSION.

Fed. Rules of Civil Pro. Rule 37 (b)

There was no Court order to compel Discovery; therefore, the district court abused its discretion to impose sanctions.

Respectfully submitted,

B R. Britt

Bryant R. Britt
Attorney for Petitioner,
In Propia Persona

1. In the case Plessy V. Furgeson, Mr. Plessy wrote a letter to the Supreme Ct. while his case was still in the district court and he received a decision.

AFFIDAVIT OF SERVICE

State of California
County of Los Angeles

The undersigned petitioner declares under the penalty of perjury that on December 2, , 1985, that he mailed copies of the Petition for Writ of Certiorari to each of the following by first class mail:

McKay, Byrne, Grahm & Van Dam
3250 Wilshire Boulevard, Suite 603
Los Anageles, Ca. 90010-1578

Spray, Gould and Bowers
5720 Ralston STreet, Suite 205
Ventura, California 93003

Clerk
Supreme Court of the United States
Washington, D.C. 02543

(40 copies) B. R. Britt

Bryant R. Britt
Petitioner
Atty. In Pro Per.

BEST AVAILABLE COPY

APPENDIX

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES — GENERAL

Case No. CV 77 4091 WPG (K) Date: Dec. 5, 1983

BRYANT R. BRITT

v.

SIMI VALLEY UNIFIED SCHOOL DIST.

DOCKET ENTRY 93

PRESENT:

HON. JOHN R. KRONENBERG, Magistrate
Joyce Zenon, Deputy Clerk Tape # 847B
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

None

ATTORNEYS PRESENT FOR DEFENDANTS:

Linda Hamlin, Dep. Atty Gen.
Jane Fox, Dep. Atty Gen.

PROCEEDINGS:

DEFENDANT'S MOTION TO STRIKE FIRST A/C;
MOTION TO DISMISS

Court and counsel confer. The Court notes no appearance by the plaintiff and orders that upon the filing of the proof of service by defendant on the plaintiff the Court will recommend that the motion to dismiss the complaint be granted, as no opposition has been filed.

It is further ordered that plaintiff's motion to appoint counsel, filed Dec. 2, 1983, is denied at this time.

cc: Judge Gray
Bryant R. Britt

UNITED TATES DISTRICT COURT
GENERAL DISTRICT OF CALIFORNIA

BRYANT R. BRITT	:	C.V. NO. 77-4091
	:	
v.	:	
	:	
SIMI VALLEY UNIFIED DISTRICT, et al.,	:	

COPY OF THE UNITED STATES SUPREME COURT DECISION, COPY OF MOTION, AND COPY OF AFFIDAVIT

The plaintiff above named, hereby, submits a copy of the U.S. Supreme Court's Decision in this case as ordered by Magistrate John Kronenberg, and copies of the motion and affidavit on which the Court based its decision for the plaintiff to proceed in forma pauperis. Leave to proceed informa pauperis is based on the motion of the moving party. The documents are numbered as follows:

	Date
1. Order of the U.S. Supreme Court	Oct. 4, 1982
2. Motion of the Appellant	March 2, 1979
3. Affidavit of Plaintiff in support of his application	March 2, 1979

Submitted by: Bryant R. Britt

Date: February 10, 1984 B. R. Britt

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BRYANT R. BRITT	:	NO. CV 77-3684 MML (K)
v.	:	
SIMI VALLEY UNIFIED SCHOOL DISTRICT, et al.	:	

NOTICE OF APPLICATION FOR COURT TO APPOINT LEGAL COUNSEL
AFFIDAVIT OF PLAINTIFF, BRYANT R. BRITT

Notice is hereby given that the plaintiff, Bryant R. Britt, above named, hereby applies to this Court for the Court to appoint Legal Counsel in this case because the plaintiff is not employed on a full time bases; and he is not financially able to support this case on the grounds that his economical standing could be damaged, and to personally pursue this case could be dangerous to the plaintiff's welfare.

DATE: March 2, 1979.

B. R. Britt

Signed: Bryant R. Britt
Attorney for Plaintiff in pro-persona

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BRYANT R. BRITT	:	
	:	
v.	:	
	:	
SIMI VALLEY UNIFIED SCHOOL DISTRICT, et al.	:	NO. CV 77-3684 MML (K)

AFFIDAVIT OF PLAINTIFF, BRYANT R. BRITT IN SUPPORT OF APPLICATION FOR COURT TO APPOINT LEGAL COUNSEL IN CIVIL RIGHTS CASE

State of California

ss.

County of Los Angeles

BRYANT R. BRITT, being duly sworn, deposes and says:

I am the plaintiff above named, and I am not employed on a full time bases; therefore, I am not financially able to support this case on the grounds that my economical status could be damaged. Also, to personally pursue this case could be detrimental to the safety of the plaintiff.

I declare, under penalty of perjury, that the foregoing is true and correct and if called upon as a witness, I could competently testify thereto.

B. R. Britt

Bryant R. Britt

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

October 4, 1982

Mr. Bryant R. Britt
252 West 65th Street
Los Angeles, CA 90002

Re: Bryant R. Britt
v. Simi Valley Unified School District, et al.
No. 81-6713

Dear Mr. Britt:

The Court today entered the following order in the above entitled case:

"The motion for Leave to proceed in forma pauperis and the petition for a writ of certiorari are granted. The judgment is vacated and t case is remanded to the United States Court of Appeals of the Ninth Circuit for further consideration in light of Patsy v. Bd. of Regents of Florida, 457 U.S. — (1982)."

Very truly yours,

Alexander L. Stevas, Clerk

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES — GENERAL

Case No. CV 77-4091-WPG (K) Date: February 13, 1984

BRYANT R. BRITT

v.

SIMI VALLEY UNIFIED SCHOOL DISTRICT, et al.

DOCKET ENTRY 98

PRESENT:

HON. JOHN R. KRONENBERG, Magistrate
Maxine L. Ng, Deputy Clerk N/A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

N/A

ATTORNEYS PRESENT FOR DEFENDANTS:

N/A

PROCEEDINGS: (In Chambers)

The Court has received and noted petitioner's submission re the order of the Supreme Court of the United States dated October 4, 1982.

Petitioner miscomprehends the import of the order. He was granted permission to proceed in forma pauperis but this does not include the appointment of counsel.

It appears to the Court that counsel has not been ordered appointed for petitioner. Petitioner has 20 days from the date of this order in which to file any written opposition to the pending Motion to Strike the Complaint and Dismiss the Action, after which the matter will be submitted without further oral argument.

cc: Bryant R. Britt
Counsel of Record

ORDER
(Date: April 27, 1984)

IN THE UNITED STATES DISTRICT COURT
For the Central District of California

BRYANT R. BRITT	:	
	:	
v.	:	
	:	
SIMI VALLEY UNIFIED SCHOOL DISTRICT, et al.	:	NO. CV 77-4091 WPG (K)

ORDER

WILLIAM P. GRAY
United States District Judge

Pursuant to 28 U.S.C. § 636, the court having reviewed the records and pleadings as well as the findings of the United States Magistrate, concurs with and adopts those findings.

Each party will bear its own costs.

IT IS FURTHER ORDERED that the Clerk of this Court shall serve a copy of the Judgment, of this Order and of the findings of the United States Magistrate by United States mail upon counsel of record for both parties.

DATED: April 27, 1984.

WILLIAM P. GRAY
United States District Judge

JUDGMENT
(Date: April 27, 1984)

IN THE UNITED STATES DISTRICT COURT
For the Central District of California

BRYANT R. BRITT	:	
	:	
v.	:	
	:	
SIMI VALLEY UNIFIED SCHOOL DISTRICT, et al.	:	NO. CV 77-4091 WPG (K)

JUDGMENT

WILLIAM P. GRAY
United States District Judge

IT IS ADJUDGED that the complaint and action are dismissed.

DATED: April 27, 1984.

WILLIAM P. GRAY
United States District Judge

NOTICE OF APPEAL
(Date: May 8, 1984)

IN THE UNITED STATES DISTRICT COURT
For the Central District of California

BRYANT R. BRITT	:	
	:	
v.	:	
	:	
SIMI VALLEY UNIFIED SCHOOL DISTRICT, et al.	:	NO. CV 77-4091 WPG (K)

NOTICE OF APPEAL

BRYANT R. BRITT
Attorney for Plaintiff,
In Propia Persona

MAY 8, 1984

PLAINTIFF, Bryant R. Britt, hereby appeals the judgment entered in this action on April 30, 1984 to the United States Court of Appeals for the Ninth Circuit, 7th and Mission Street, San Francisco, California.

DATED: May 8, 1984.

B. R. Britt

BRYANT R. BRITT
Attorney in Pro Per
252 West 65th St.
Los Angeles, CA 90003

NOT FOR PUBLICATION

MEMORANDUM AFFIRMING JUDGMENT
(Submitted May 3, 1985*)
(Filed October 4, 1985)

IN THE UNITED STATES COURT OF APPEALS
For the Ninth Circuit

BRYANT R. BRITT	:	
	:	No. 84-5898
v.	:	
	:	
SIMI VALLEY UNIFIED SCHOOL DISTRICT, et al.	:	D.C. NO. CV 77-4091 WPG (K)

MEMORANDUM*

Before: SCHROEDER, ALARCON, and BOOCHEVER, Circuit Judges.

Appeal from the United States District Court for the Central District of California.
Honorable William P. Gray, District Judge, Presiding.

Britt appeals from the order dismissing this matter for his willful failure to comply with discovery. We affirm.

I.

Britt received notice by mail from the Simi Valley Unified School District (the School District) that his deposition would be taken on July 14, 1983. He failed to appear. He also failed to respond to a letter dated September 28, 1983, warning him of sanctions for his failure to comply with discovery.

The School District filed a motion to dismiss the action based on Britt's noncompliance with discovery. Britt failed to appear at the hearing on the motion to dismiss. An order was issued requiring Britt to show cause why the action should not

*The panel finds this case appropriate for submission without oral argument purusant to Fed. R. App. P. 34(a) and 9th Cir. R. 3(f).

be dismissed. Britt appeared at the show cause hearing. He advised the court that the Supreme Court, in vacating the prior dismissal of his action for failure to state a claim, had ordered that counsel be appointed to represent him. Britt was given ten days to file this order. Instead, he filed a Supreme Court order granting him leave to proceed in forma pauperis.

On February 13, 1984, the magistrate issued an order informing Britt that the Supreme Court's order did not include the appointment of counsel. The order further required Britt to file an opposition to the motion to dismiss in twenty days. Britt failed to file any papers in opposition to the dismissal motion. The magistrate recommended dismissal of the action with prejudice. The district court adopted the recommendation and entered judgment dismissing this action with prejudice.

II.

Sanctions imposed for a failure to comply with discovery are reviewed for abuse of discretion. *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 642 (1976) per curiam). A court may enter judgment against a party that fails to obey a discovery order. Fed.R.Civ.P. 37(b)(2)(c); *Rainbow Pioneer No. 33-18-04A v. Hawaii-Nevada Inv. Corp.*, 711 F.2d 902, 905 (9th Cir. 1983). The district court did not abuse its discretion in dismissing the action with prejudice.

Britt had previously demonstrated his ability to proceed pro se, make appearances, and file papers. He was given an opportunity to comply with discovery, to offer an excuse for noncompliance, and to file an opposition to the motion to dismiss.

In his brief filed in this court, Britt has failed to explain his failure to attend the deposition. Under these circumstances, his noncompliance can be construed as willful. Dismissal was an appropriate sanction. *Rainbow Pioneer,* 711 F.2d at 905.

The judgment is affirmed.